* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No. 1500 of 2006**

% Judgment reserved on: 17th January , 2007

Judgment delivered on: 24th January , 2007

THE COMMISSIONER OF INCOME TAX -XI
CENTRAL REVENUE BUILDING
NEW DELHI ..... Appellant
Through Mr.Sanjeev Sabharwal, Adv.

versus

SHRI R.N.KUMAR
12/2, B-BLOCK, CONNAUGHT PLACE
NEW DELHI-110001 ..... Respondent
Through:Nemo.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

V.B. GUPTA, J.

The present appeal is filed by the Revenue against the order dated 24th February, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench "SMC" in ITA No.3869(Del)/2005 for the assessment year 1980-81.

2. The brief facts are that the original assessment in this case was completed on 28th February, 1983 at a loss of Rs.87,351/-. On receipt of information from ADI, Bombay, a notice under Section 148 of the Income Tax Act (for short 'Act') was issued to the Assessee in March, 1985. The Assessee did not file any return. Accordingly, Assessing Officer issued notice under Section 142(1) of the Act and the reassessment was done by making addition of Rs.3,10,000/- on account of cash credits appearing in the books which is as follows:-

(i) Shri Prakash V.Thakkar	Rs.1,50,000/-
(ii) Ambica Corporation	Rs.1,00,000/-
(iii) Sh.K.D.Khona	Rs. 60,000/-

	Rs.3,10,000/-
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3. The reason stated for addition was that Sh.N.J.Rawal, a hundi broker, through whom these amounts have been received, indulged in 'Hawala' transaction. These persons were not produced to support the fact of making advance to the Assessee. The issue of reopening the assessment and addition travelled upto Income Tax Appellate Tribunal and the Division Bench of the Tribunal in ITA No.2017/Del/1990 decided on 24th April, 1994 upheld the action to initiate re-assessment proceedings. On merits, the Tribunal set aside the assessment to be framed afresh in accordance with law.

4. The Assessing Officer again made the same additions and the Income Tax Appellate Tribunal again by its order dated 13th August, 2003, set aside the assessment and directed the Assessing Officer that he shall complete the assessment in accordance with the order of the Tribunal dated 24th August, 1994.

5. Consequent to this, a notice under Section 142(1) of the Act was issued to the Assessee to establish the genuineness of the credits and accordingly, Assessing Officer again made the addition as unexplained loans for Rs.3,10,000/- and assessment stood completed at an income of Rs.2,22,650/-.

6. The Assessee filed appeal before Commissioner Income Tax(A) who upheld the addition for the reason that Assessing Officer could make enquiry in such an old case only if the Appellant provided information about the parties and brought material about genuineness of the credits.

7. The learned Tribunal vide impugned order did not find any justification in sustaining the addition and accordingly, decided the matter in favour of the Assessee.

8. It has been contended by the learned counsel for the Appellant that the order of Income Tax Appellant Tribunal is contrary to the facts and law since the Assessing Officer had specifically carried out the enquiry and in

spite of various opportunities, the Assessee could not establish the identity, genuineness or creditworthiness of the creditors and further the staleness of claim does not make a wrong as right.

9. It is clear from the records that the Assessing Officer did not carry out the directions given by the Tribunal for making assessment in the case. In the original assessment, the Assessee had established the credits and the Assessing Officer being satisfied, did not make any addition thereof. The Assessee did not know any of the creditors personally and the information on the basis of which action for reassessment was taken was based on the statement given by Sh.N.J.Rawal, hundi broker and as such he was the right person from whom the enquiries should have been made by the Assessing Officer. Admittedly, this was not done in this case and, therefore, the Assessing Officer should not have rested whole enquiry only on the information from the Assessee.

10. Under the peculiar facts and circumstances of the case, since the loans was not taken directly by the Assessee, the helplessness shown by him to produce these parties or tell their present whereabouts could not be termed as non-cooperation, particularly, when the matter was more than 20 years old. Any remissness on the part of the Assessing Officer has to be at the cost of national exchequer and must necessarily result in the loss of revenue.

11. On this point, a reference be made to the case of *Parshuram Pottery Works Co.Ltd. vs. ITO*, 106 ITR 1(SC); the relevant portion of which reads as under:-

> "It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realizing that price should familiarize themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in spheres of human activities. So far as the income tax assessment orders are concerned, they cannot be reopened on the score of income escaping assessment under Section 147 of the Act of 1961 after the expiry of four years from the end of assessment year unless there be omission order failure on the part of the assessee to disclose fully and truly all material facts necessary for the

> assessment. As already mentioned, this cannot be said in the present case. The appeal is consequently allowed, the judgment of the High Court is set aside and the impugned notices are quashed. The parties in the circumstances shall bear their own costs throughout."

12. The above being the position, no fault can be found with the view taken by the Tribunal. Thus, the order of Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of Section 260-A of the Income Tax Act, which is confined to entertaining only such appeals against the order which involves a substantial question of law.

13. Accordingly, the present appeal is, hereby, dismissed.

(V. B. GUPTA)
JUDGE

January 24, 2007 **(MADAN B. LOKUR)**
sb **JUDGE**